IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2324 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -

2. To be referred to the Reporter or not? -
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3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge? -

KANTILAL B RATHOD

Versus

UNION OF INDIA

Appearance:

MR DM THAKKAR for Petitioner

MR DK NAKRANI FOR SHANTILAL S SHAH for Respondent No. 1

SERVED BY RPAD - (R) for Respondent No. 2 & 3,

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 01/02/99

ORAL JUDGEMENT

The petitioner was appointed as a "Nayak" in the Railway Protection Force, Bhavnagar Para. The punishment of stoppage of increment for one year was imposed upon the petitioner regarding some act of subordination amounting to misconduct under the Rules by the order

dated 23-4-1988. The petitioner filed an appeal before the appropriate authority and that appeal was subsequently dismissed. But in the appeal giving out the defence and brief facts of the case the petitioner made certain allegations to the effect "During inquiry of RG ASM UNA Shri U.B. Patel Shri S.B. Singh, SIPF/JND has taken Rs.200/-." In respect of those allegations the petitioner was chargesheeted that the petitioner while working at Junagadh had submitted the representation dated 5-8-1986 addressed to the Commandant, RPF/CCG alleging that SIPF S.B. Singh of Junagadh has accepted bribe of Rs.200/from Shri U.B. Patel, RG ASM Una which was inquired by IPF (SIB) BVP and found it baseless and false after conducting necessary inquiry he himself also failed to prove his version during the course of inquiry. Thus, he committed an act in contravention of Rule 3 of The Railway Service Conduct Rules, 1966 and was held responsible for the above charges. The departmental proceedings were held against the petitioners and the charges levelled against him were proved on 31-1-1989. The Disciplinary Authority, Div. Security Commissioner, RPF, Kota passed the order dated 31-3-1989 imposing punishment of removal from service. The petitioner filed an appeal before the appropriate authority. The Div. Security Commissioner, RPF, Kota by the order dated 19-10-1989 modified the punishment and the punishment of removal from service awarded to the petitioner was substituted to that of compulsory retirement with effect from the date of removal i.e. 8-4-1989. The petitioner has challenged the order of punishment of the appellate authority by filing this writ petition.

2. Learned counsel for the petitioner firstly submitted that show cause notice for the punishment proposed has not been issued to the petitioner and no opportunity has been afforded to the petitioner to file his representation before the appropriate authority before the order of punishment was passed. In this connection, an affidavit-in-reply has been filed by the respondent no. 1 and it has been asserted in para 18 that there is no provision for issuance of show-cause notice against the punishment proposed to be imposed in the R.P.F. Rules, 1987 with the amendment of Article 311 (2) of the Constitution of India, the R.P.F. Rules 1987 are in accordance with the provisions of constitutional requirements. Learned counsel for the petitioner further referred to the order of punishment wherein the charge-sheet was sent to the petitioner under Rule 44 (10) (2) (b) and (c), of the RPF Rules, 1959 under which the Disciplinary authority is required to give him a notice stating the action proposed to be taken in regard

to him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action and to consider the representation, if any, made by the member so charged in response to the notice under clause (b) and determine what penalty, if any, should be imposed on the member so charged, and pass appropriate orders on the case.

3. Thus, the learned counsel for the petitioner submitted that under the RPF Rules, 1959 the departmental proceedings were initiated against the petitioner. The Disciplinary Authority was required to issue show cause notice to the petitioner against the proposed punishment and to call upon for representation of the petitioner before passing the order of punishment. In the absence of show cause notice whole proceedings are vitiated and the punishment is not sustainable in law.

4. Learned counsel for the respondents Mr. D.K. Nakrani for Mr. S.S. Shah submitted that it is true that the order of punishment show that the proceedings were initiated under the RPF Rule, 1959. But those RPF Rules have already been repealed by the RPF Rules 1987 and under Rule No. 154.6 of RPF Rule, 1987, the authorities were not required to afford opportunity of making any representation on the proposed to be imposed.

5. I have considered the contentions raised by the learned counsel for the parties. It is true that Rule 154.6 of RPF Rules, 1987 does not require any representation from the party charged for the punishment to be imposed. But the principles of natural justice require that before imposing any major punishment the authority should afford reasonable opportunity to the delinquent officer and should also give show cause notice against the proposed punishment. The Supreme Court in the case of Union of India Vs. Mohd. Ramzankhan reported in 1991 (1) Supreme Court Cases 588, held that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter. In that respect, The Bench of the Supreme Court consisting three Judges overruled the conclusion contrary reached by any two Judges Bench will no longer be taken to be laying down good law, but this

ruling shall have prospective application and no punishment imposed shall be open to challenge on this ground.

6. Thus, in view of the decision of the Supreme Court stated above, the punishment awarded by the Disciplinary Authority upon the petitioner was not legal one. Whether any rule for that purpose is prescribed for affording any opportunity to represent the case or not, in order to avoid further litigation the learned counsel for the parties gave consensus and agreed to convert the minor punishment of compulsory retirement by some other punishment as the punishment awarded is disproportionate in view of gravity of charges.

7. Considering the facts and circumstances, as the petitioner has not been charged with any substantial act amounting to misconduct and the fact that he has been charged for certain allegations made in the memo of appeal filed before the appropriate authority and the allegations were made only in respect of defence against the charges made against him in that case, as such the punishment awarded is disproportionate in the facts of the present case, I think that if the punishment of stoppage of two increments without giving further effect is imposed with nonpayment of back wages would suffice to meet the ends of justice and the petitioner would be entitled to reinstatement without back wages, as nonpayment of back wages would also be the punishment itself with stoppage of two increments.

8. Accordingly, this petition is allowed in part and the respondents are directed to reinstate the petitioner forthwith without back wages and the punishment of compulsory retirement is substituted by the punishment of stoppage of two increments and nonpayment of back wages and all consequential benefits. Further, it is made clear that for other purpose, the petitioner will be deemed to be continue in service. Accordingly, rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

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/JVSatwara/